Supreme Court, U.S.
FILED
97 · 350 JUN 25 1997
OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States October Term, 1997

Taiwo Okusami, Petitioner
v.
Psychiatric Institute of Washington, Inc. et al. Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia

Petition for Writ of Certiorari

Taiwo Okusami, M.D.
9 Bitterroot Court
. Rockville, MD 20853
301-929-1772
(Pro Se)

46 pp

QUESTIONS PRESENTED

I. Whether physicians granted temporary privileges have no right, under the law, to procedural due process protection when subjected to a statutory regulated peer review process (also congressionally regulated) by hospitals.

1. Duty to provide fair hearing in the event of an adverse decision.
2. Duty to confidentiality during process of peer review.

II. Whether the denial of procedural due process amount to anticompetitive violation of District of Columbia statute and Federal antitrust laws.

1. Anticompetitive and discriminatory application of D.C. 32-1307.
2. Intentional interference with the rights to practice as a physician.

III. Whether the Respondents have a duty to comply with the statutory requirements governing denial of application as embodied in their bylaws. (D.C. 32-1307)(f) and Respondents' bylaws, 1986: Article V Section II(e); page 7)

IV. Whether the District Court's ruling, and affirmation by the District of Columbia Court of Appeals for the District of Columbia, was contradictory to rulings in similarly situated cases by other Districts Courts of Appeals, especially in light of a previous ruling by a District of Columbia Court of Appeals.

V. Whether the summary disposition by the lower court, in light of uncontroverted evidence of violation was abuse of discretionary powers.

LIST OF PARTIES

1. Petitioner, Taiwo Okusami, M.D., a physician licensed to practice in the District of Columbia.

2. Defendant, The Psychiatric Institute of Washington D.C., Inc. is a corporation organized under the laws of the District of Columbia, whose self-expressed purpose is to serve as a psychiatric hospital providing patient care, education and research.

3. Defendant, Howard A. Hoffman, M.D., is employed as the President and Medical Director for The Psychiatric Institute of Washington, Inc.

4. Defendant, Psychiatric Institutes of America, Inc., is the parent of defendant The Psychiatric Institute of Washington, Inc.

5. Defendant, National Medical Enterprises, Inc. is the parent company of Psychiatric Institutes of America, Inc.

TABLE OF CONTENTS

Opinions Below..... 1

Jurisdiction..... 1

Statutory Provisions Involved..... 1

Statement of the Case..... 2

Reasons for Granting the Writ..... 4

Conclusion 17

TABLE OF AUTHORITIES

Cases:

Anderson v. Liberty Lobby Inc., 477 U.S. 242 (1986), mot. denied, 480 U.S. 903 (1987)..... 18

Balkisoon v. Capitol Hill Hospital, 588 A .2d 304, 308 (D.C. App. 1989)..... 15

Johnson v. Greater Southeast Community Hospital Corporation, 789 F. Supp. 427 (D.D.C. 1992)..... 7

National Auto Brokers Corp. v. General Motors Corp., 572 F .2d 953 (2nd Cir. 1978), cert. denied, 439 U.S. 1972 (1979)..... 17

Okusami v. Psychiatric Institute of Washington, Inc., 959 F .2d 1062 (D.C. 1992).....3, 10

Scott v. Jackson, 569 A . 2d 53 (D.C. 1991)..... 6

Summit Health Ltd. v. Pinhas, 111 S. Ct 1842 (1991)..... 12

Svoboda v. Bowers Distillery, Inc., 745 F .2d 528 (8th Cir. 1984)..... 18

Tights v. Acme-McCrary Corp., 541 F .2d 1047 (4th Cir. 1976) cert, denied, 429 U.S. 980 (1976)..... 17

United States v. Lowental, 248 F .2d 397 (7th Cir. 1957) 17

United States v. Heffner, 420 F .2d 809, 812 (4th Cir. 1969 15

Statutes:

D.C. Code Nos. 32-501–32-505, *et al*.....6, 7

D.C. Code 32-1307 *et al*..... 6, 7, 10

Health Care Quality Improvement Act of 1986, 42 U.S.C.A. 1101-11152 (1988 & Supp. 1993)..... 7, 11,12

GLOSSARY

The Psychiatric Institute of Washington D.C. Inc.	(PIW)
The Patient Care Evaluation Committee	(PCEC)

In the
Supreme Court of the United States
October Term, 1997

Petition for Writ of Certiorari

Petitioner, Taiwo Okusami, M.D., respectfully prays that a writ of certiorari issue to review the judgement below.

Opinion Below

The judgement of the United States Court of Appeals for the District of Columbia is at Appendix A.
The order of the United States District Court for the District of Columbia is at Appendix B.
The order of the United States Court of Appeals for the District of Columbia is at Appendix C.
The opinion of the United States Court of Appeals for the District of Columbia is cited as *Okusami v. Psychiatric Institute of Washington, Inc.*, 959 F .2d 1062 (D.C. 1992).

Jurisdiction

The date on which the United States Court of Appeals decided my case was April 8, 1997.
An order granting extension of time to file for rehearing and denial of motion for rehearing was filed on April 4, 1997.
The jurisdiction of this Court is invoked under 28 U.S.C.δ 1254(1).

Constitutional and Statutory Provisions Involved

The District of Columbia Codes 32-501–32-505 et. al and 32-1307 et al and the Health Care Improvement Act of 1986, 42 U.S.C.A. 11101–11152 are the relevant provisions in this case.

STATEMENT OF CASE

Petitioner, Taiwo Okusami, is a licensed physician in the District of Columbia. On or about February 13, 1987, Petitioner submitted an application for admitting privileges and membership to the Respondents hospital. He was routinely granted temporary privileges in accordance with the Respondents bylaws. (Pet. App. D; pg. 5a.)

On August 13, 1987, Petitioner received a telephone call from Dr. Greenberg, who identified himself as a member of the peer review committee (named Patient Care Evaluation Committee (PCEC). Dr. Greenberg reported that he had reviewed a patient under Petitioner's care and that the PCEC had some concerns and asked him to get Petitioner's input before he completed his report. The Petitioner disagreed with the questions raised and suggested that he would be better able to address such concerns if provided a copy of the full report. The Petitioner also said he would gladly present his reasons for treatment if invited to discuss such at a PCEC meeting.

Later on the evening of August 13, 1987, Petitioner was notified by telephone that a meeting was scheduled for 8:00 A.M. on August 14, 1987. At that meeting, Dr. Brain, acting as Medical Director, and Donald Silver, Hospital Administrator, informed Petitioner that the purpose of the meeting was to notify him that there were concerns about reviews of three cases under his care and that because of these concerns the Petitioner could only continue with his temporary privileges if he accepted the condition of supervision. Petitioner protested that in the first instance he had only become aware of a case reviewed in the last 24 hours and that no one had given him any report to enable him to reasonably respond to the concerns. Secondly, he was now being told of two other cases for the first time. Petitioner

reminded the Respondents representatives that there were specific regulations guiding the peer review process and that he should be permitted to use such a process before any decision about the status of his privileges was made. The Respondents representative rejected Petitioner's suggestion, claiming that they had a right to impose supervision on any physician with temporary privileges. The Respondents then revoked the Petitioner's temporary privileges for rejecting the imposition of supervision without granting Petitioner necessary formal access to rebuttal of alleged questions raised by Respondents. (Pet .App. E-1, E-2, E-3, pg. 9a-16a.)

As a result of the Respondents action in revoking the Petitioner's temporary privileges, his employer, Group Health Association, initially placed Petitioner on administrative leave and later terminated his employment. (Pet. App. E-4, E-5, pg. 17a-20a.)

On September 9, 1987, the Executive Committee of the Medical Staff decided not to grant clinical privileges to Dr. Taiwo Okusami. This decision was based on a concern of this physician's performance in providing quality care and maintaining a good working relationship with the clinical staff. (Pet. App. E-6, pg. 21a.)

The Respondents, however, failed to notify the Petitioner of this decision as required by the bylaws and statute. (D.C. Code 32-1307 and Pet. App. D, pg. 5a.)

In April 1989, the Respondents granted the Petitioner full admitting privileges and membership without any new information justifying this action. The reversal was only in response to Petitioner's demand that Respondents had a duty to complete the application process as required by the bylaws.

This case was dismissed at the lower court level in an order filed on May 17, 1995 after briefs and motions by both parties. The District Court summarily dismissed the case after

an appellate panel of the United States Court of Appeals for the District of Columbia had remanded, in part, some of the Petitioner's claims. (*Okusami v. Psychiatric Institute of Washington, Inc.*) The Petitioner's central claim was that the Respondents owed him the right to be provided with, at a minimum, procedural due process protection encompassed in the s' bylaws and as required by the regulatory statute of the District of Columbia and Federal law, the Health Care Quality Improvement Act (HCQIA) of 1986.

The Petitioner appealed the lower court's ruling to the United States Court of Appeals for the District of Columbia. In a judgement filed on April 8, 1996, the lower court's ruling was affirmed. The Petitioner petitioned for an enlargement of time to file for rehearing, was granted enlargement of time, but was denied rehearing in an order filed April 4, 1997.

The Petitioner seeks review of this case because fundamental questions of rights of physicians granted temporary privileges with respect to statutory protection at both State and Federal levels have been ruled absent and the opinion contradicts the general findings of other District Courts of Appeals regarding the protections due physicians subjected to statutory or congressionally regulated peer review.

Reasons for Granting the Petition

I

Whether physicians granted *temporary* privileges are equally protected by the statutes governing peer review activity as their peers with *active* or *permanent* privileges.

The Respondents claim that their bylaws provide for the imposition of supervision on physicians with temporary

privileges. (Appendix D; Pet. App. pg. 5a–8a.) The District Court accepted this argument and found for the Respondents.

The Petitioner argues otherwise: that the Respondents are wrong because this provision applies only to granting of temporary privileges *and not* to the change in status of privileges already granted. The District Court accepted the argument and found for the Respondents.

The Respondents do not dispute the fact that the Petitioner was already operating under the unconditional temporary privileges as in Appendix D. (Pet. App. pg. 5a.)

The Respondents, using the instrument of a statutory regulated peer review, subjected the Petitioner to a review of patients under his care. The central issue is whether having done so, Respondents have a duty to provide obligatory due process to the Petitioner as provided by the statute. This question is governed by the D.C. Code, the Respondents' own bylaws and federal regulation. (Pet. App. D and cited the Health Care Quality Improvement Act of 1986)

Peer review is defined in the District of Columbia Immunity Statute and specifies when that peer review is required.

The District of Columbia peer review statute, D.C. Code 32-501 et seq. defines *peer review* as:

(5) the procedure by which health-care facilities and agencies, . . . monitor, evaluate and take actions to improve the delivery, quality, and efficiency of services within their respective facilities. including recommendations, consideration of recommendations, actions with regard thereto, and implementation of the actions. The term *peer review* includes, but is not limited to, the following: . . . (32-501 (5) A–G; (6), (7) at pages 340 and 341)

The definition of peer review in the D.C. Code covers all aspects of a determination of clinical privileges. It makes no distinction between activities directed at any particular group of health professionals; in this case between physicians who are categorized as having temporary versus permanent privileges. As a result, peer review is required in any assessment of a health care professional's ability to perform, which derives from the definition of peer review itself.

The Petitioner argues that the review was lawful but that the denial of rebuttal to him was unlawful. A District of Columbia court held that a purpose of the statute is to provide procedural due process protection to physicians facing peer review panels. In *Jackson v. Scott*, the Superior Court of the District of Columbia noted that:

in addition to protecting peer review panels, logic dictates . . . [,that the privilege's 'undoubted . . . premise' also was to protect" the due process rights of a physician aggrieved by the decision of the medical review panel.

Jackson v. Scott at 1974 (citing Stone v. University of Maryland

Medical Systems Corporation, 948 F .2d 128 (4th Cir. 1991), supra, 948 F .2d at 130) (describing Maryland peer review statute), aff'd, *Scott v. Jackson*, 569 A .2d 523 (D.C. 1991); see also *Johnson v. Greater Southeast Community Hosp. Corp.*, supra 789 F. Supp. at 429 (describing the purpose behind District of Columbia statute providing peer review immunity).

The definition of peer review in the D.C. Code together with case law interpreting the statute establishes the rule that a hospital must provide a peer review hearing to all physicians when their status is adversely acted upon.

To whom is peer review owed? Who has a right to a peer review?

1. D.C. Code creates rights to peer review in the D.C. Code 32-1307: (at page 415)

(f) Whenever a health professional submits a completed application for staff membership or clinical privileges to a facility or agency, that facility shall have 120 days to grant or deny the application. No facility or agency may deny such an application, terminate or reduce the rights and responsibilities attending the staff membership of a health professional, or reduce, suspend, revoke, or refuse to renew his or her clinical privileges, without providing him or her with the following minimal procedural protections: . . .
Listed at (f) 1-6; page 415.

The Federal Immunity Statute prescribes due process "guidelines" for hospitals for peer review proceedings as a condition precedent to hospital immunity provisions of the Act. [Health Care Quality Improvement Act of 1986 (HCQIA), codified as *amended* 42 U.S.C.A. 11101-11152 (1988 & Supp. 1993]

The Act imposes a requirement of notice to the physician before action is taken. Adequate notice is deemed to have been provided if:
The physician has been given notice stating:
(A) (i) that a professional review action has been proposed to
be taken against the physician.
(ii) (the) reasons for the proposed action [.]

The requirements of the HCQIA are consistent with the standards set forth in the D.C. Code 32-1307 and embodied in the Respondents own bylaws.

2. Duty to provide confidentiality is provided for in the D.C. Code 32-505:

(a) Except as otherwise provided by this section:
(1) The files, records findings, . . . or information pursuant to 32-502 or federal or other District of Columbia law shall

be confidential and shall be neither discoverable nor admissible into evidence in any civil, criminal, legislative, or administrative proceeding . . . (32-505 (a) (1) at page 342)

The Respondents violated the statute when their representatives contacted the Petitioner's supervisor, Dr. Kalin, to discuss concerns generated by peer review activities. Pet. App. E-1, E-2, pg. 9a-13a. document that the contacts made by Respondents' representative were without the expressed permission of the Petitioner and in violation of the statute. Dr. Brain, a member of the Executive Committee and the peer review committee also testified against Petitioner at an arbitration hearing when Petitioner sought to reverse his employment termination subsequent to the Respondents unlawfully revoking his admitting privileges. Dr. Brain's participation was a violation of the confidentiality regulation in the statute.

An adverse review of a physician has the same effect on his or her professional reputation irrespective of his privilege status.

The Respondents are obliged to provide procedural due process protection to all physicians subjected to a statutory regulated peer review process. Case law interpretations of the statute have uniformly accepted the inherent immunity granted to a health facility when peer review is undertaken in good faith. It is clear in this instance that the Respondents used the peer review process in an unlawful way and not to improve the delivery of health care to patients reviewed; otherwise, the Respondents would have provided an opportunity to the Petitioner to rebut the allegations made. The Respondents' use of the peer review process was clearly a pretext and not for the stated claim. The members of the peer review committee were requesting the removal of Petitioner as well as reporting:

Emergency meeting of the Executive Committee will be convened to revoke Dr. Okusami's privileges since the

hospital has enough data at this point to make this request. (Pet. App. E-1 pg. 9a.)

This is strong evidence supporting Petitioner's claim that the Respondents review had motive other than those stated. The Respondents memo was on August 12, 1987 before any attempt to contact Petitioner.

II

A. Whether the denial of statutory due process amounts to violation of the District of Columbia Code 32-1307's prohibition of *anticompetitive practices* as well as Federal antitrust laws.

The District of Columbia Code 32-1307(a) states:

. As part of its overall responsibility for the operation of a facility or agency, the governing body, or designated persons so functioning, shall ensure that decisions on clinical privileges and staff membership are based on an objective evaluation of an applicant's credentials, *free of anticompetitive intent or purpose* (emphasis supplied) . . . (32-1307(a); pages 413–414)

Federal antitrust law, Sherman Act (Section One) describes:

(1) an agreement among or between parties to engage in activities which restrain trade and states that
(2) That the effect of this conspiracy is to restrain trade and is anticompetitive.

The Petitioner in his original complaint alleged that members of the Respondents' Executive Committee and Peer Review Committee (called Patient Care Evaluation Committee or PCEC) conspired to violate the D.C. Code and Federal laws using as an *instrument* of their conspiracy the peer review process. A panel of the United States Court of Appeals for the District of Columbia rejected this claim on the basis that Dr. Hoffman, an employee of the Respondents and also a

Respondent, had unity of economic interest; the panel therefore precluded finding a conspiracy among this group. *Okusami v. Psychiatric Institute of Washington* 959 F .2d 1064–1066

The Petitioner respectfully submits that his claim was adequately pled as the conspiracy involved not only members who were employees of the Respondents but also non-employee physicians who are private practitioners and whose economic interests are similar to, but independent of, the Respondents. Dr. Brain, a private practitioner, was named as a Respondent in the Petitioner's initial complaint.

The pretext for peer review was the concern for quality of patient care, but the real motive is evident in the minutes of the Respondents showing that the concerns were about the failure of the Petitioner to use hospital resources that would have generated more income to the hospital; namely *longer hospital stay.*

The Respondents' minutes note:

. . . that Dr. Okusami had admitted several patients to the ICU, discharging them from the ICU after a very short treatment time, which is not the usual hospital practice . . . (Pet. App. F, pg. 22a.)

The above sentiment was echoed in all the three reviews. These submitted exhibits are available in the District Court's docket.

Physicians in private practice such as Drs. Brain and Greenberg, who were both members of the Executive Committee as well as the Peer Review Committee, stand to gain economically by supporting the longer stay hospital policy of the Respondents. The civil conspiracy therefore removes a physician whose short stay practice, if unchallenged, may force the hospital to modify its own longer stay policy and thereby cause a decrease in revenue for the hospital and private practice physicians.

The Respondents intentional misuse of the peer review process was purely to remove a physician it deemed a threat to its practice. The act was a violation of the District of Columbia anticompetitive prohibition and Federal antitrust law. The Respondents lose all immunity because the act was not taken "in the reasonable belief that [it] was in the furtherance of quality health care" (HCQIA) of 1986, 42 USC 11112(a).

Further, the Respondents had decided to revoke Petitioner's privileges on August 12, 1987, before any of its members contacted him about any reviews. The Petitioner maintained that the Respondents never contacted him about any concerns until August 13, 1987. Pet. App. E-3, pg. 14a-16a supports this contention. Pet. App. E-1, pg. 9a clearly shows that Respondents went outside of the bylaws when they revealed confidential information from the peer review process to Dr. Kalin, the Petitioner's supervisor. Appendix E-1 also shows that the Respondents, by trying to remove the Petitioner, would not have to comply with the bylaws.

In *Summit Health, Ltd v. Pinhas* (111 S Ct. 1842; 1847)

A violation may still be found in such circumstances because in a civil action under the Sherman Act, liability may be established by proof of *either* an unlawful purpose or an anticompetitive effect.

B. Whether the intentional violation of the statutes amounts to tortious interference with the Petitioner's right to practice as a physician and with his business relationship with both his employer and patients under his care.

A panel of the United States Court of Appeals for the District of Columbia ruled that the Petitioner's claim of tortious interference were adequately pled (*Okusami v. Psychiatric Institute of Washington* 959 F .2d 1062 D.C. Cir. 1992)

The District of Columbia law on the subject of tortious interference was noted in *Business Equipment Center Ltd. v. DeJur Amsco Corp.*, 465 F. Supp. 775 (D.D.C. 1978), Judge Gasch noted that "[i]nterference with business relations is a tort that can arise in two situations." *Id.* at 788. He described these as "(1) where there is interference with a contract between the plaintiff and some third party and (2) where the Respondent interferes with the 'plaintiff's prospective' business advantage." *Id*

In *Genetic Systems Corp. v. Abott Laboratories*, 691 F. Supp 407, (D.D.C. 1988) Judge Joyce Hens Green stated:

To establish a claim for tortious interference with the prospective economic advantage, a plaintiff ordinarily must plead (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the interferer, (3) intentional interference inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage.

The above cited in a dissenting opinion written by Circuit Judge Sentelle (*Okusami v. Psychiatric Institute of Washington* 959 F .2d 1062 D.C. Cir. 1992; 1068, 1069)

The Petitioner claims and the evidence (Pet. App. E-1, pg. 9a) shows that:

(1) Petitioner was employed by Group Health Association,

(2) Respondents knew that Petitioner was employed by Group Health Association and that Dr. Kalin was the Petitioner's supervisor,

(3) unlawful revocation of privileges induced or caused the termination of Petitioner's employment with Group Health Association (Pet. App. E-4, E-5, pg. 17a-20a.)

(4) and the resultant damage was loss of employment and maligned professional reputation.

The Petitioner respectfully submits that the claim of tortious interference was adequately pled and that the evidence supports the claim. The Petitioner was licensed to practice medicine and deliver care to patients referred to him by his employer; he therefore had both a business relationship with his patients as well as with his employer.

III

Whether the Respondents had a duty to notify the Petitioner that his application was denied.

The lower court's order (affirmed by the appellate panel) filed May 17, 1995 states "that any irregularity in processing his application for permanent privileges does not give rise to a cause of action for pecuniary damages; . . ." Appendix B, pg. 3a.

This conclusion is plainly wrong.

The duty to comply with the law is inherent in the licensing of the institution to do business in the District of Columbia as attested to by the Respondents own bylaws, rules and regulations (Pet. App. D, pg. 5a):

WHEREAS, The Psychiatric Institute of Washington, D.C. is organized under the laws of the District of Columbia (Extracts from Respondents' Bylaw 1986).

Article V Section II clearly imposes a duty to notify applicant:

When the recommendation to the Executive Committee is adverse either in respect to appointment or in the granting of clinical privileges, the Hospital Administrator shall promptly so notify the practitioner by certified mail, return receipt requested. No such adverse recommendation need be forwarded to the Governing Body until after the practitioner has exercised or has been deemed to have waived his right to

a hearing as provided in the Fair Hearing Plan, described in Appendix II of these bylaws.

The Petitioner claimed that the Respondents never notified him when his application was rejected and so never waived his right to the fair hearing process. The evidence of Pet. App. E-6 shows that Respondents on September 9, 1987 ". . . decided not to grant clinical privileges to Dr. Okusami. .. "

The Respondents have provided no proof contrary to the Petitioner's assertion.

In *Balkisson v. Capitol Hill Hospital*, 558 A.2d 304 (D.C. App. 1989) the court stated "A hospital failure to comply with material procedures delineated in its bylaws is inherently arbitrary." *Cf. United States v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) (arbitrariness inherent in agency's violations of its own procedures). If the bylaws are to be meaningful, the Hospital cannot technically comply with them while defeating the purpose inherent in the process they create. The Hospital's bylaws create a decision-making process that affords petitioner certain protections and assures that the Hospital does not deny a doctor's staff privileges on the basis of unsupported accusations or on an arbitrary and capricious basis.

See also *Balkisoon v. Capital Hill Hospital*; footnote number 6, page. 308.

The lower court's decision minimized the violations as mere *irregularity* when such clear violations were the essence of the damages done to the Petitioner.

IV

Whether the dismissal of claims of negligent failure to abide by the bylaws was contradictory to findings of other District Courts of Appeals.

As variously referred to above, other courts have found that the failure of an institution to follow its bylaws invite judicial reviews, and these courts have found for physicians who brought such to trial. The difference in this case is that a physician with temporary privileges is the Petitioner. For reasons already stated above, this group of physicians should have equal protection under the law when subjected to congressionally regulated peer review activity.

V

Whether the summary disposition of this case, in light of uncontroverted evidence, is an abuse of discretionary power by the lower court.

The lower court erroneously ordered judgement as a matter of law for the Respondents pursuant to Fed. R. Civ. P. (50)(a) because there never was a trial by jury.

Appellate review of the District Court's order dismissing a complaint pursuant to Fed. R. Civ. P. 50(a) involves applying the same standards employed by the District Court in passing on the original motion. *Tights, Inc. v. Acme-McCrary Corp.*, 541 F .2d 1047, 1055 (4th cir. 1976), cert. denied 429 U.S. 980 (1976). The question is whether or not there was sufficient evidence to support a verdict for the party opposing the motion. *Id.* All issues of credibility must be resolved in favor of Petitioners. *National Auto Broker v. General Motors Corp.*, 572 F .2d 953 (2nd Cir. 1978), cert. denied 439 U.S., 1072 (1979).

Fed. R. Civ. P. 50(a) provides:

(a) *Judgement as a matter of law*

(1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on an issue, the court may determine the issue against that party with respect to a claim or defense that cannot under the controlling law be

maintained or defeated without a favorable finding on that issue.

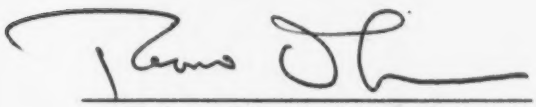
The rule specifically sets the standard for a trial by jury, not for a proceeding where the court's decision is made on the pleadings alone. *United States v. Lowental*, 248 F .2d 397 (7th Cir. 1957) A jury was never emplaneled in this case. Furthermore, a Rule 50(a) motion can only be granted when there can be but one reasonable conclusion under the law, and reasonable minds cannot differ as to the import of the evidence. *Anderson v. Libert Lobby, Inc.*, 477 US 242, 250-251 (1986), mot. denied, 480 U.S. 903 (1987). Here, the Petitioner's evidence demonstrates prima facie case of the Respondents' negligence and tortious interference. These claims were deemed properly pled by a ruling of the Appellate panel. *Okusami v. Psychiatric Institute of Washington*, 959 F .2d 1062. The Petitioner's Motion for Judgement as a matter of law, pursuant to Rule 50(a), should not have been granted. *Svoboda v. Bowers Distillery, Inc.*, 745 F .2d 528 (8th Cir. 1984) (Rule 50(a) motions are to be granted only when nonmoving party has presented insufficient evidence to support jury verdict. As a threshold matter, not only did the Respondents move for relief from the District Court based upon an inapplicable standard because there was never a jury emplaneled in this case, but the District Court for the District of Columbia had no authority to grant the Respondents' motion as it did, in light of Petitioner's overwhelming evidence of Respondents' wrongful acts. This basic technical procedural error alone merits a reversal and a remand back to District Court.

As evident from the materials presented so far, there are genuine issues of fact that necessitate presentation of the case to a jury. These represent only part of the body of evidence presented at the lower court's docket.

Conclusion

The Petition for a writ of certiorari should be granted.

Respectfully submitted,



Taiwo Okusami (Pro Se)

8/25/17

Date

INDEX TO APPENDICES

Appendix A. Decision of the United States Courts of Appeals for the District of Columbia.
Appendix B. Decision of the United States District Court for the District of Columbia.
Appendix C. Decision of the United States court of Appeals for the District of Columbia granting motion to file for rehearing and denying petition for rehearing.
Appendix D. (Relevant) Extracts from the bylaws of the Psychiatric Institute of Washington, Inc.
Appendix F. Appellant's exhibits:

1. No. 9-Patient Care Evaluation Committee Minutes August 12, 1987.
2. No. 10-Memorandum: from Don Silver, dated August 14, 1987.
3. No. 12-Letter to Dr. Okusami; from Dr. Brain, dated August 14, 1987.
4. No. 13-Letter to Dr. Okusami; from Dr. Kalin, dated August 14, 1987.
5. No. 17-Letter to Dr. Okusami; from Dr. Kalin dated September 3, 1987.
6. No. 29-Memorandum to File; Wand Miller, Assistant Administrator for Administration, Psychiatric Institute of Washington, D.C.
7. No. 31-Letter to Dr. Okusami from Al Smith, Administrator, Psychiatric Institute of Washington, D.C. dated April 18, 1989.

Appendix F. Clinical Monitoring Report Dated Sept. 1, 1987.

APPENDIX A

United States Court of Appeals
For the District of Columbia Circuit

No. 95-7139 **September Term, 1995**

TAIWO OKUSAMI,

APPELLANT

v.

PSYCHIATRIC INSTITUTE OF WASHINGTON, INC., ET AL.,

APPELLEES

Appeal from the United States District Court
for the District of Columbia
(90cv800)

Before: Williams, Randolph, and Tatel, Circuit Judges

JUDGMENT

Having considered the record from the United States District Court for the District of Columbia and the briefs and arguments of counsel, the court is satisfied that appropriate disposition of this case does not require a published opinion. See D.C. Cir. R. 36(b). it is

ORDERED and ADJUDGED that the district court's order filed May 17 ,1985, be affirmed. To establish a claim of tortious interference with business relations under D. C. law, appellant must demonstrate that the interference was intentional. Brown v. Carr, 503 A.2d 1241, 1247 (D.C. 1986). Because appellant failed to respond to Appellee's motion for judgment as a matter of law or in the alternative for summary judgment with any evidence that appellees intentionally interfered with appellant's relations with patients, the district court properly disposed of counts VIII and IX of the appellant's claim. Celotex Corp. v. Catrett, 477 U.S. 317, 322-24(1986).

With regard to counts I and II, the only damage appellant asserted was harm to his future employment. Plaintiff's reply

to Defendant's Motion for Judgment as interference with prospective business advantage must be intentional to be actionable. Brown, 503 A.2d at 1247; see also *Sullivan v. Heritage Foundation*, 399 A.2d 856, 861 (D.C. 1979). Again, appellant failed to point to any evidence indicating that appellees were motivated by any intent to interfere with any of appellant's business prospects. The only other possible basis for counts I and II is the negligent infliction of emotional distress. Such claims require that plaintiff was physically injured by the defendant's actions or was in the "zone of physical danger and was caused by the defendants' negligence to fear for his or her own safety." *Williams v. Baker*, 572 A.2d 1062, 1067 (D.C. 1990) (in banc); see also *Mackey v. United States*, 8 F.3d 826, 831 (D.C. Cir. 1993). Since appellant adduced no evidence that he was either physically injured or placed in any physical danger, he could not have prevailed on these grounds even had he raised them.

In issuing this order, this court notes that the failure of appellant's counsel to comply with the rules governing appeals, if repeated in the future, may result in sanctions pursuant to FED. R. APP. P. 38 and D.C. CIR. R. 38.

The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing. See D.C.CIR. R.41.

For the Court:
Mark J. Langer, Clerk

APPENDIX B

United States Court
For the District of Columbia Circuit

TAIWO OKUSAMI, M.D.,
Plaintiff,
v.
Civil Action No. 90-800 (TRJ)
PSYCHIATRIC INSTITUTE OF WASHINGTON, D.C., ET AL.,
Defendants.

ORDER

Upon consideration of defendants' motion for judgment as a matter of law, plaintiff's motion for summary judgment, the respective oppositions thereto, and the entire record herein, it appearing, for essentially the reasons advanced by defendants, that defendants were justified under the institutional by-laws in imposing conditions upon Dr. Okusami's practice while his staff privileges remained provisional; that any irregularity in processing his application for permanent privileges does not give rise to a cause of action for pecuniary damages; and that no business relationship subject to interference (tortious or otherwise) existed between Dr. Okusami and those patients he undertook to treat, whose business relationship was exclusively with Group Health Association, Inc., It is the 17th day of May, 1995.

ORDERED, that defendants' motion for judgment as a matter of law is granted; and it is

FURTHER ORDERED, that plaintiff's motion for summary judgment is denied; and it is

FURTHER ORDERED, that the amended complaint, and each count thereof, is dismissed with prejudice.

Thomas Penfield Jackson
U.S. District Judge

APPENDIX C

United States Court of Appeals
For the District of Columbia Circuit

No. 95-7139 September Term, 1996
90cv00800

TAIWO OKUSAMI, M.D.
Appellant
v.
PSYCHIATRIC INSTITUTE OF WASHINGTON, INC., ET AL.,

BEFORE: Williams, Randolph and Tatel, Circuit Judges

ORDER

Upon consideration of appellant's motion for leave to file a petition for rehearing out of time, the response thereto and of the reply, it is

ORDERED that the motion is granted. The Clerk is directed to file the ledged petition. Upon consideration thereof, it is

FURTHER ORDERED that the petition is denied.

Per Curiam

For the Court:
Mark J. Langer, Clerk

BY: Robert A. Bonner
Deputy Clerk

APPENDIX D

EXTRACTS FROM BYLAWS OF THE MEDICAL STAFF OF THE PSYCHIATRIC INSTITUTE OF WASHINGTON, D.C. 1986

PREAMBLE

Whereas, The Psychiatric Institute of Washington, D.C. is organized under the laws of the District of Columbia; and

ARTICLE V
Section II: Appointment Process

a. Within one month of the receipt of the completed application for appointment, the Executive Committee shall examine the evidence of character, professional competence, qualifications and ethical standing of the practitioner and shall determine, through information contained in references given by the practitioner and from other sources available to the Committee including an appraisal from the clinical service for which privileges are sought, whether the practitioner has established and meets all of the necessary qualifications for the category of staff appointment and the clinical privileges requested by him.

b. Upon completion of its review of the application and related material, the Executive Committee shall make a written report of its investigation to the Medical Staff including the recommendation as to whether the practitioner be appointed to the Medical Staff, that he be rejected for Medical Staff appointment, or that his application be deferred for further consideration. All recommendations to appoint must also specifically recommend the clinical privileges to be granted which may, where appropriate, be qualified by probationary

conditions. Together with its report, the Executive Committee shall transmit to the Medical Staff the completed application and all other documentation considered in arriving at its recommendation.

c. The Medical Staff shall review the recommendations of the Executive Committee and all supporting documentation.

d. When the recommendation of the Executive Committee and the Medical Staff is favorable to the practitioner, the Hospital Administrator shall forward it together with all supporting documentation to the Governing Body for consideration at its next scheduled meeting.

e. When the recommendation to the Executive committee is adverse to the practitioner either in respect to appointment or in the granting of clinical privileges, the Hospital Administrator shall promptly so notify the practitioner by certified mail, return receipt requested. No such adverse recommendation need be forwarded to the Governing Body until after the practitioner has exercised or has been deemed to have waived his right to a hearing as provided in the Fair Hearing Plan, described in Appendix II of these bylaws.

ARTICLE VI
Section II: Temporary Privileges

a. Upon receipt of an application for Medical Staff appointment from an appropriately licensed practitioner, the Medical Director or his designee may, upon the basis of information then available which may reasonably be relied upon as to the competence and ethnical standing of the applicant, grant temporary admitting and clinical privileges to the applicant; but in exercising such privileges, the applicant shall act under the supervision of the Medical Director or Director of Service.

b. Temporary clinical privileges may be granted by the Medical Director or his designee for the care of a specific patient to a practitioner who is not an applicant for appointment in the same manner and upon the same conditions as set forth in Paragraph a. of this Section II, provided that there shall first be obtained such practitioner's signed acknowledgement that he has received and read the Medical Staff's Bylaws, Rules and Regulations and that he agrees to be bound by the terms thereof in all matters relating to his temporary clinical privileges. Such temporary privileges shall be restricted to the treatment of not more than one patient in any one year by any practitioner, after which such practitioner shall be required to apply for appointment to the Medical Staff before being allowed to attend additional patients.

c. The Medical Director or his designee may permit a physician serving as a substitute for an appointee to the Medical Staff to attend patients without applying for appointment to the Medical Staff for a period of not to exceed thirty (30) days. He shall, however, be granted temporary privileges as in Subsection b. of this Section II.

d. Special requirements of supervision and reporting may be imposed by the Medical Director on any practitioner granted temporary privileges. Temporary privileges shall be immediately terminated by the Medical Director upon notice of any failure by the practitioner to comply with such special conditions.

e. The Medical Director may at any time terminate a practitioner's temporary privileges effective as of the discharge from the Hospital of the practitioner's patients then under his care in the Hospital. However, where it is determined that the life or health of such patients would be endangered by continued treatment by the practitioner, the termination may be imposed as determined solely by

the Medical Director or his designee and the same shall be immediately effective. The Medical Director, or in his absence, the Chairman of the Executive Committee shall assign an appointee to the Medical Staff to assume responsibility for the care of such terminated practitioner's patients until they are discharged from the Hospital. The wishes of the patient shall be considered where feasible in selection of such substitute practitioner.

f. Refusal or termination of temporary privileges shall not entitle the practitioner to a hearing.

APPENDIX E-1

Patient Care Evaluation Committee Minutes
August 12, 1987
Page 16

Follow up on reviews of Dr. Okusami's records.

Given the pattern of cases and concern about the quality of care rendered by Dr. Okusami, the Committee has decided to take the following action:

1. Refer further discussion about Dr. Okusami's continuation as an inpatient-attending physician at PIW to the Medical Director to discuss with the Director of Psychiatry at GHA. The Committee was particularly concerned because Dr. Kalin of GHA has, on two separate occasions, stated his own concern about Dr. Okusami's competence, referring to him as "incompetent, insurbordinate, uncooperative, and having a history of verbally abusing fellow staff and patients."

2. Consider requesting that Dr. Kalin examine the patient and assess appropriateness of treatment rendered by his GHA physician for himself, rather than relying only on PIW report.

3. Hospital Administrator will call Dr. Kalin this afternoon, August 12, 1987, to alert him that a letter expressing the Committee's concerns, request and proposed actions will be sent by messenger to Dr. Kalin today. The letter will express concern that Dr. Okusami is temperamentally unsuited to inpatient work and request that he be reassigned elsewhere. The letter will ask why Dr. Okusami was not taken off the case as Dr. Kalin stated he would do. The letter will state clearly the conditions for Dr. Okusami to reapply for privileges, including: review

of his GHA evaluations and any disciplinary action that has been taken, etc. Dr. Greenberg will document a detailed report of his review of the case for the record.

4. Emergency meeting of the Executive Committee will be convened to revoke Dr. Okusami's privileges since the hospital has enough data at this point to make this request.

APPENDIX E-2

MEMORANDUM

TO: For the Record

FROM: Don Silver
Administrator

DATE: August 14, 1987

RE: Dr. Okasami

During the week of August 2, 1987, Dr. Hoffman indicated to me that there were some concerns regarding the treatment being provided by Dr. Okasami to his patients. Dr. Hoffman indicated that he had been in contact with Dr. Kalin regarding these concerns and that Dr. Kalin had indicated to Dr. Hoffman that he also for some time had concerns regarding Dr. Okasami's competence.

At the August 5, 1987 meeting of the Executive Committee of the Medical Staff Dr. Okasami's application for Active Medical Staff Privileges was reviewed. Dr. Okasami had initially been given temporary privileges pending his approval for Active Medical Staff Privileges. At this meeting it was decided that further clinical review of Dr. Okasami's cases should be made prior to his application being processed out of the Executive Committee of the Medical Staff. Therefore, his application was to be held in process pending review and a report back from PCEC to the Executive Committee at is next meeting. As is the case for all new physicians the Patient Care Monitoring Committee (PCEC) performs selective concurrent review of patients being attended by new physicians.

During the evening of August 10, 1987, I received a call at home from Dr. Brain. Dr. Brain was functioning as acting Medical Director during the vacation of Howard Hoffman, M.D. Dr. Brain shared with me an updated concern regarding a current patient of Dr. Okasami. Dr. Brain further shared with me that he had spoken with Dr. Kalin prior to calling me. Dr. Brain share with me also that Dr. Kalin had indicated that he was and had been concerned regarding Dr. Okasami's competence as well as his staff relations in providing coordinated care for his patients. After my conversation with Dr. Brain I called Dr. Kalin. I requested that Dr. Kalin reassign Dr. Okasami. Dr. Kalin indicated directly to be his same concern regarding Dr. Okasami. Prior to his making a decision to reassign Dr. Okasami he desired us to provide him a written summary of our concerns. I shared with him that we would proceed and work with him to this end.

On Wednesday, August 12, 1987, Wanda Miller asked me to come into the PCEC meeting. The Committee shared with me their further concerns regarding Dr. Okasami's treatment of his patients. The Committee felt that Dr. Kalin had reservations regarding Dr. Okasami's competence and failed to share those concerns with us prior to his assigning Dr. Okasami to attend GHA patients at PIW. The Committee decided that I should request that Dr. Kalin immediately reassign Dr. Okasami based on his oral communication individually to Dr. Brain and myself regarding Dr. Okasami's competence which was in direct discrepancy with his written recommendation supporting Dr. Okasami's application for Active Medical Staff Privileges at PIW.

I called Dr. Kalin immediately after that meeting and share with him the above. Dr. Kalin shared with me that his letter of reference was written in November of 1986 and at that time he had no indication regarding Dr. Okasami's performance to reflect a different opinion as expressed in his letter of recommendation. Dr. Kalin communicated this

message a number of times whereupon I informed him that his letter of reference was written in April of 1987. Dr. Kalin's position remained the same in that he would not move to reassign Dr. Okasami until PIW provided him a written summary of our concerns. Rather than follow up on this conversation in a written document to Dr. Kalin I decided to have discussion with Legal Counsel.

On August 13, 1987, Wanda Miller and myself had a telephone conference call with Tom Guidoboni, outside Legal Council. I coordinated arranging this meeting and scheduled it for Friday, August 14, 1987 at 8:00 a.m. at 4460 MacArthur Blvd. A summary of what took place in that meeting is fully described in the letter dated August 14, 1987, from Dr. Brain to Dr. Okasami.

APPENDIX E-3

The Psychiatric Institute
Of Washington, D.C.
4460 MacArthur Boulevard, N.W.
(202) 944-3400
TDD for the Hearing Impaired 944-3576

August 14, 1987

Taiwo Okusami, MD
Group Health Association
Medical Director's Office
4301 Connecticut Avenue, NW
Washington, DC 20008

Dear Dr. Okusami:

This letter is a follow-up to our meeting held on Friday, August 14, 1987. Also present at that meeting were Harvey Kalin, MD, Dr. William Cavendar, MD, Donald Silver and Wanda Miller. The Psychiatric Institute of Washington (PIW) had granted you temporary privileges. As part of the privileging process, you submitted your application for active medical staff privileges. As part of your application, you had signed an acknowledgement indicating you "received and read the bylaws of the hospital governing body and the bylaws rules and regulations of the medical staff and agree to be bound by the terms thereof."

As part of our process of reviewing applications for active privileges at our facility, we selectively review concurrently those patients which an Attending is treating under their temporary privilege status. Our first review of one of your cases raised some clinical questions regarding the care that was being provided by you to one of your patients. At our last Executive committee meeting of the medical staff it was decided not to further process your application, pending

further review of patients that you were treating under temporary privilege status. Further review of patients under your care raised other issues of questions regarding the services you were providing to your patients. On Thursday, August 13, 1987, Richard Greenberg, MD, on behalf of the Patient Care Evaluation Committee contacted you to share with you our concerns. During his discussion you were not open to fully discuss these clinical issues. In fact, you indicated that all issues should be dealt directly through GHA. This is in direct conflict with our Medical Staff Bylaws, whereby you are required to be responsive to quality assurance questions raised regarding patient care. Due to questions being raised regarding the care you are providing to your patients and your refusal to work within the policy and procedures of the PIW medical staff bylaws and rules and regulations, we found it necessary to immediately place you upon supervision. Since you were not receptive to this supervision, PIW hereby revokes your temporary privileges to attend patients. This revocation is effective immediately.

At this meeting Dr. Kalin was requested to immediately assign another GHA physician who has active attending privileges in good standing to attend current GHA patients.

Yours truly,

Lawrence a. Brain, MD
Acting Medical Director
Psychiatric Institute of Washington

Enclosures:

August 5, 1987 memo from Howard Hoffman, MD to PCEC Case Review – Ruby
August 6, 1987 memo from Lawrence Brain, MD to Howard Hoffman, MD
RE: David

August 13, 1987 memo from Richard Greenberg, MD
RE: Gina

cc: Howard Hoffman, MD
Medical Staff Application File
Harvey Kalin, MD

APPENDIX E-4

GHA
Group Health Association
Psychiatry Services
1005 21st Street, NW
Washington, DC 20016
202-872-7285

14 August 1987

Taiwo Okusami, M.D.
Group Health Association
Department of Psychiatry
1005 21st Street, N.W.
Washington, D.C. 20036

Dear Dr. Okusami:

As you are aware, notification was received today from the Psychiataric Institute informing GHA of their decision to terminate your hospital privileges. The reason for taking this action was due to questions being raised regarding the care you are providing to your patients, your refusal to work within the policy and procedures of the PIW medical staff bylaws and rules and regulations, and your subsequent refusal to work under the supervision of the medical staff.

In view of the above, I find it necessary to place you on immediate suspension with pay pending review of the issues. I find this action necessary in light of the concern over the quality of care being delivered to GHA members, your refusal to work under supervision, and the lifting of your privileges. These actions have a significant impact on your ability to deliver care until satisfactorily resolved. I will complete the investigation as soon as possible in order to

bring this situation to a conclusion. Until then, you will remain in a suspended status.

A determination of disciplinary action up to and including termination, if merited, will be made upon completion of the investigation.

Sincerely,

Harvey B. Kalin, M.D.
Chairman
Department of Psychiatray

cc: Harvey Gold, M.D., Acting Medical Director
Nieves Zaldivar, M.D., President, CAP
Carol Garnes-Mills, M.D., Chariperson, Greviance Committee, CAP

APPENDIX E-5

Group Health Association

September 3, 1987

Certified Mail

Taiwo Okusami, M.D.
9 Bitterroot Court
Rockville, Maryland 20853

Dear Dr. Okusami:

On August 17, 1987, you were placed on paid administrative leave pending a review of The Psychiatric Institute of Washington's decision to revoke your temporary hospital privileges. This action by PIW prevented you from admitting patients, practicing and rounding at one of the hospitals in which we admit members and with whom we do business.

Following a review of some of the patients under your care in this hospital, PIW determined that it was appropriate to revoke your temporary privileges. This decision was made after PIW staff had discussed their concern with you regarding the manner in which you were practicing and the care you were providing to your patients.

I have reviewed to decision with Dr. Howard Hoffman, Medical Director of PIW, and cannot take issue with their review or with their decision. In fact, several additional issues concerning the manner in which you practice have come to my attention during this review.

In view of your inability to practice in the hospitals in which GHA does business because of your privileges being revoked, it is necessary to terminate your employment

effective ten (10) days from the date of this letter. In view of the fact that you are on administrative leave, you will be given ten (10) days pay in lieu of notice. You may call me to make arrangements to secure any personal belongings from your office and to return any GHA keys, cards or other property you might have.

Respectfully,

Harvey Kalin, M.D.
Chairman
Department of Psychiatry

APPENDIX E-6

MEMORANDUM TO THE FILE

On September 9, 1987, the Executive Committee of the Medical Staff decided not to grant clinical privileges to Dr. Taiwo Okusami. This decision was based on a concern of this physician's performance in providing quality patient care and maintaining a good working relationship with the clinical staff.

Wanda Miller
Assistant Administrator for Administration

APPENDIX F

CLINICAL MONITORING REPORT

Committee: Patient Care Evaluation Committee

Indicator: New Treatment Team Member

Criterion: The medical record documentation of each new member of the Medical Staff will be reviewed by the Committee as documentation becomes available.

Reporting Period: July/August 1987

Data: Review of medical record documentation of Taiwo Okusami, M.D. The following records were reviewed:

D.B., Medical Record No. 622903 on July 15, 1987
R.W., Medical Record No. 623086 on August 12, 1987
G.B., Medical Record No. 623079 on August 12, 1987
D.W., Medical Record No. 623018 on August 12, 1987

Committee had several concerns about the initial case reviewed; including thoroughness of diagnostic work-up, management of medications and disposition planning.

Following the first review, it was brought to the Committee's attention that Dr. Okusami had admitted several patients to the ICU, discharging them from the ICU after a very short treatment time, which is not the usual hospital practice. The Committee then focused on three of these cases. Concerns about the above mentioned areas were not allayed by these subsequent reviews, and in fact were in-

creased. As is the usual practice of the Committee when questions are raised about physician practice, the Committee asked a physician member of the Committee to review the concerns with the reviewed physician in person. Dr. Greenberg met with Dr. Okusami on August 13, 1987 and documented the results of that meeting in a memo to Dr. Brain, who was acting medical director at the time. Of greatest concern was Dr. Okusami's unwillingness to discuss the Committee's concerns at all in a collegial manner. From the hospital's perspective, this unwillingness to discuss treatment presented a serious question about whether Dr. Okusami could continue to practice in this hospital where openness and a willingness to at least listen to concerns of a hospital quality assurance committee is expected. Concern was raised that this attitude of unwillingness to listen to others' opinions could potentially interfere with the treatment of patients. All of the above concerns were discussed in meeting on August 14, 1987, attended by Dr. Brain, Drs. Okusami, Kalin and Cavander from GHA, Don Silver and Wanda Miller.

Findings

Results of the meeting was that Dr. Okusami's temporary privileges were revoked, and PIW asked Dr. Kalin to assign another GHA physician to the hospital. Copies of case review minutes, memos, and minutes of the meeting with GHA are filed in the confidential minutes binder.

September 11, 1987